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NO. 88-1972

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

THE PEOPLE OF THE STATE OF ILLINOIS, PETITIONER,

VS.

LLOYD PERKINS, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIFTH JUDICIAL DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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10 pp

QUESTION PRESENTED FOR REVIEW

Whether the factual determinations of the Circuit Court of St. Clair County, Illinois and the Appellate Court of Illinois, Fifth Judicial District, that the respondent was subjected to custodial interrogation under Miranda should be disturbed by This Court?

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BRIEF IN OPPOSITION

The respondent, Lloyd Perkins, by counsel, Daniel M. Kirwan, Deputy Defender, Office of the State Appellate Defender, Fifth Judicial District, respectfully requests that This Honorable Court deny the State of Illinois' petition for writ of certiorari to the Appellate Court of Illinois, Fifth Judicial District, seeking review of the Appellate Court's decision rendered on November 21, 1988. The opinion is reported at People v. Perkins, 176 Ill. App. 3d 443, 531 N.E.2d 141 (5th Dist. 1988).

REASONS WHY THE PETITION SHOULD BE DENIED

THIS COURT SHOULD DENY THE PETITION BECAUSE IT FAILS TO PRESENT AN ISSUE OF SUFFICIENT IMPORTANCE UNDER THIS COURT'S RULE 17 TO MERIT REVIEW AND BECAUSE THE DECISION BELOW IS CORRECT.

The State of Illinois has petitioned This Court to review the decision of the Appellate Court of Illinois, Fifth Judicial District, which affirmed the order of the Circuit Court of St. Clair County suppressing statements made by the defendant. The State of Illinois had filed a petition for leave to appeal to the Illinois Supreme Court (Ill. Rev. Stat., 1987, Ch. 110A, §315), which was denied by the Illinois Supreme Court. This Court

should similarly deny review, because the State of Illinois' petition fails to present a question of sufficient importance for merit review under This Court's Rule 17, and because the decision of the Appellate Court of Illinois is correct.

The State of Illinois' petition apparently attempts to present this case as a "conflicts case" between decisions of state and federal courts warranting This Court's review. (State's petition at 5) However, the decision for which it seeks review is that of the Appellate Court of Illinois, Fifth Judicial District, not that of the Illinois Supreme Court. Under This Court's Rule 17.1(b), review of conflict cases is appropriate "[w]hen a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals." (emphasis added) This Court's Rule 17.1(b) is not applicable because the decision to be reviewed is not that of the state court of last resort.

Under This Court's Rule 17.1(c), review is appropriate "[w]hen a state court ... has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court." The State of Illinois' petition attempts to bring review of this case under the last concern of Rule 17.1(c), that the Appellate Court of Illinois' decision is in some "way in conflict with applicable decisions of this Court". The State's petition states that the Appellate Court's "ruling fails to honor this Court's admonition" in Berkemer v. McCarty, 468 U.S. 420 (1984). (State's petition at 5) In Berkemer This Court stated that "[f]idelity to the doctrine announced in Miranda [v. Arizona, 384 U.S. 436 (1966)] requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." 468 U.S. at 437. However, the Appellate Court of Illinois' decision does not conflict with Berkemer or any other decision of This Court. Berkemer did not establish new standards to restrict the reach of Miranda v. Arizona, 384 U.S. 436 (1966). In Berkemer This Court held that Miranda warnings are required in

all misdemeanor cases in which the defendant is taken into custody. The Court held that Miranda warnings are not requ.. for questioning during a traffic stop, until the motorist "is ... subjected to treatment that renders him 'in custody'", at which point Miranda warnings are required. Berkemer, 468 U.S. at 440. This holding of Berkemer is merely a restatement of Miranda because it holds that the question of whether there is a simple traffic stop or whether the motorist has been taken into custody and subjected to interrogation is to be resolved by the trial court in its fact-finding function. The Appellate Court's, and the Circuit Court of St. Clair County's, decisions suppressing the defendant's statements follow the well-settled principles of Miranda. The essential dispute by the State is with the factual determinations made by the Circuit Court of St. Clair County in the application of Miranda, and the acceptance of those factual determinations by the Appellate Court of Illinois.

The only basis for review left to the State in its petition is that "a state court ... has decided an important question of federal law which has not been, but should be, settled by this Court". U.S. Sup. Ct. R. 17. However, the petition fails to demonstrate the importance of the question presented so as to merit review by This Court. The cases cited by the State of Illinois to demonstrate a split between various courts on the question reveal that there is not a looming problem to be addressed by This Court. Three of the four cases that the State of Illinois cites for its position as being in conflict with the decision in this case (State's petition at 5) have been denied review by This Court. United States v. Willoughby, 860 F.2d 15 (2nd Cir. 1988), cert. denied, __ U.S. __, 109 S.Ct. 846, 102 L.Ed. 2d 978 (1989); People v. Williams, 44 Cal. 3d 1127, 751 P.2d 901 (1988), cert. denied, __ U.S. __, 109 S.Ct. 514, 102 L.Ed. 2d 549 (1988); State v. McDonald, 387 So.2d 1116 (La. 1980), cert. denied, 449 U.S. 957 (1980).

Two of the cases cited by the State of Illinois for its ...tition (State's petition at 5) are not appropriate to the legal discussion here. See Willoughby and People v. Aalbu, 696 P.2d

796 (Colo. 1985)(en banc). In both Willoughby and A...bu statements made by the defendants were not introduced into evidence as statements concerning a past criminal act, but as statements concerning an ongoing criminal conspiracy; thus the statements made by the defendants were an offense.

In Willoughby the codefendant, Arthur Prioleau, was convicted of conspiracy to obstruct justice in connection with his pending trial for armed robbery. Prioleau was incarcerated on the armed robbery charge and had a conversation with a former girlfriend, Sabrina Johnson. During the conversation, Johnson wore a concealed recording device provided by the government. In the conversation, Prioleau made statements that the defendants had sent threats to one witness and had attempted to locate another witness to prevent their "standing[ing] in our way". Willoughby, 860 F.2d at 18. Prioleau also had threatened Johnson to not tell the police anything concerning the armed robbery. These statements were not introduced into evidence at the armed robbery trial but at the trial for conspiracy to obstruct justice. These statements were part of the conspiracy for which Prioleau was on trial. Consequently, Willoughby stands for the unremarkable proposition that Miranda warnings need not be given to a prisoner when the conversation involved is itself a criminal violation, because as a factual matter the conversation is not a custodial interrogation concerning a past criminal violation.

In Aalbu, the defendant, Gene Aalbu, was convicted of criminal solicitation to commit first-degree murder. Aalbu was imprisoned for a drug conviction. While imprisoned he met and conversed with another inmate, James Ross. Ross had worked as an police informant on prior occasions. In those conversations, Aalbu told Ross that he wanted some people killed. In later conversations, Aalbu told Ross that he wanted one of his codefendants, Mark Olson, killed. Ross agreed to kill Olson for a pickup truck, a gun, and some money. Ross reported these conversations to the police. These conversations formed the ...me of solicitation. Aalbu stands for the same unremarkable proposition as Willoughby.

The decision in this case also does not warrant review because the Appellate Court here upheld a federal constitut right of the respondent. This Court's primary purpose should be to ensure "that certain rights are firmly secured against possible oppression by the Federal or State Governments." Florida v. Meyers, 466 U.S. 380, 385 (1984) (Stevens, J., dissenting). As Justice Stevens further stated in Meyers, This "Court must be ever mindful of its primary role as the protector of the citizen and not the warden or the prosecutor." Id. at 387. That the Illinois Supreme Court denied review of the case further demonstrates that a manifest injustice against the State was not committed requiring This Court's intervention.

Further, the decisions of both the Circuit Court of St. Clair County and the Appellate Court of Illinois are correct applications of the settled law of Miranda. In the hearing on the motion to suppress, the circuit court was required to determine the factual questions of whether there was (1) custody, (2) interrogation, and (3) failure to give the proper warnings under Miranda. That the circuit court determined as a factual matter that there was custodial interrogation without warnings under Miranda was a decision within its discretion and supported by the facts of this case. On review, the Appellate Court of Illinois was required to affirm the circuit court's factual determinations unless found to be manifestly erroneous. People v. Conner, 78 Ill. 2d 513, 401 N.E.2d 513 (1979). That the Appellate Court affirmed is merely a reflection that the discretion vested in the circuit court had not been abused and therefore did not permit reversal. This Court should not interfere in these factual determinations made by the Illinois courts.

CONCLUSION

Because the State's petition fails to raise a question of sufficient importance for This Court's review, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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October Term, 1988

THE PEOPLE OF THE STATE OF ILLINOIS, PETITIONER,

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NOTICE AND PROOF OF SERVICE

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The undersigned, being first duly sworn on oath, deposes and states that she has mailed the typewritten original of the brief in opposition for the respondent and the motion for leave to proceed in forma pauperis in the above-captioned matter to the Clerk of the Supreme Court and that I am serving the Illinois Attorney General, and the respondent each with one copy by depositing the copies in the mail in Mt. Vernon, Illinois, with sufficient prepaid postage and addressed as indicated, and by hand delivery to the State's Attorneys Appellate Service Commission, on this 17th day of August, 1989.

Stephanie Fletcher

Subscribed and sworn to before me

this 17th day of August, 1989.

Pamela S. Richardson
Notary Public

OFFICIAL SEAL
PAMELA S. RICHARDSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 6-30-92